UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 18 1996

Brian D. Bertonneau
Reynolds Metals Company
6601 W. Broad Street
Richmond, VI 23230-1701

Re: Carroll & Dubies Superfund Site
Administrative Order on Consent, II-CERCLA-95-0217

Dear Mr. Bertonneau:

This letter is written to inform you that the public comment period on the above-mentioned Order on Consent ("Consent Order") has closed and that comments received did not require EPA to modify or withdraw from the Consent Order. Pursuant to paragraph 34 of the Consent Order, the Consent Order is hereby effective as of the date of this letter.

Reynolds Metals Company is required to remit $75,094.65 to EPA within thirty days of this letter. Please see Section VII of the Consent Order for information regarding payment. Please note that a copy of the check should be sent to me instead of Douglas Fischer, at the address listed for Douglas, and to Maria Jon, instead of Sharon Trocher, at the address listed for Sharon, as per paragraph 21.

I have enclosed for your information, a copy of the comments received, EPA's response to those comments, and EPA's responsiveness summary. The comments, our response and the responsiveness summary will also be placed in the Site file.

If you have any questions, please do not hesitate to call me on Mondays and Thursdays at 212-637-3183 or on Tuesdays and Fridays at 914-478-5951.

Sincerely yours,

Sharon E. Kivowitz
Assistant Regional Counsel
Office of Regional Counsel

cc: M. Jon

700038

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF THE CARROLL & DUBIES SUPERFUND SITE Reynolds Metals Company, Respondent Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9622(g)(4).	ADMINISTRATIVE ORDER ON CONSENT U.S. EPA INDEX NO. II-CERCLA-95-0217

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or § 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E (issued Sept. 13, 1987, amended by memoranda dated June 17, 1988 and May 19, 1995).

2. This Consent Order is issued to Reynolds Metals Company ("RMC" or "Respondent") and concerns the contribution of Respondent toward the costs of response actions that have been

and will be conducted in connection with the Carroll & Dubies Superfund Site (the "Site"), located in the Town of Deerpark, Orange County, New York.

3. Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. This Consent Order was negotiated and executed by EPA and Respondent in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order. Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

4. EPA and the Respondent agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in this Consent Order.

II. PARTIES BOUND

5. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to fully and legally bind the party represented by him or her. Any change in ownership or corporate status of the Respondent, including any transfer of assets or real or personal property, shall in no way alter Respondent's payment responsibilities under this Consent Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, including the attached appendices, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Order" shall mean this Administrative Order on Consent and all appendices attached thereto. In the event of a conflict between this Consent Order and any appendix, this Consent Order shall control.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

e. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral or a lower case letter.

f. "Parties" shall mean the United States and Respondent.

g. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA paid at or in connection with the Site through May 17, 1995, plus the interest on those costs which has accrued pursuant to 42 U.S.C. § 9607(a) through the effective date of this Consent Order.

h. "Remedial Design/Remedial Action" or "RD/RA" shall mean the design, implementation and operation and maintenance of the remedy selected by EPA for the first operable unit at the Site.

i. "Respondent" shall mean Reynolds Metals Company.

j. "ROD" or "Record of Decision" shall mean the first operable unit ("OU1") Record of Decision for the Carroll & Dubies Superfund Site, issued by EPA on March 31, 1995 pursuant to the NCP in order to select an OU1 remedial action to be implemented at the Site.

k. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

l. "Site" shall mean the Carroll & Dubies Superfund Site, located in the Town of Deerpark, Orange County, New York, which is depicted generally on the map attached as Appendix 1.

m. "State" shall mean the State of New York.

n. "United States" shall mean the United States of America, its agencies, departments, and instrumentalities.

o. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

IV. FINDINGS OF FACT

7. The Site was operated by Carroll & Dubies Sewage Disposal, Inc. ("Carroll & Dubies") as a waste disposal facility from approximately 1970 through 1979, during which time the Site was used for the disposal of septic and municipal sewage sludge and industrial wastes. During Carroll & Dubies' operation of the Site, wastes containing hazardous substances were disposed of into unlined lagoons.

8. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154.

9. Pursuant to a February 8, 1990 Administrative Order on Consent issued by EPA, Kolmar Laboratories, Inc. ("Kolmar") and Wickhen Products, Inc. ("Wickhen") commenced a Remedial Investigation and Feasibility Study ("RI/FS") at the Site pursuant to the NCP.

10. Kolmar and Wickhen completed a Preliminary Remedial Investigation Report in October 1992 and a Supplemental Remedial

Investigation Report in December 1993. Kolmar and Wickhen completed a Feasibility Study ("FS") Report in July 1994.

11. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 15, 1994.

12. EPA issued its ROD for the Site on March 31, 1995, in which the Agency selected the remedial action to be implemented for the first operable unit at the Site.

13. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of May 17, 1995, EPA had paid approximately $737,478.99 in Past Response Costs.

14. Information currently known to EPA indicates that RMC arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance(s) owned or possessed by RMC which was disposed of at the Site.

15. In accordance with Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), information currently known to EPA indicates that the amount of hazardous substances contributed to the Site by Respondent does not exceed 1.0% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed by Respondent to the Site do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site. Based upon the information known to EPA, the estimated volume of the hazardous substances contributed to the Site by Respondent is

17,935 gallons, which represents approximately 0.32% of the total volume of hazardous substances contributed to the Site.

16. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of remediating contamination at or in connection with the first operable unit at the Site, taking into account possible cost overruns in completing the remedial action selected in the ROD and possible future costs if the first operable unit remedial action selected by EPA proves not to be protective of public health or the environment.

17. The payment to be made by Respondent pursuant to this Consent Order, as reflected in Paragraph 20 hereof, is a minor portion of the Past Response Costs and the OU1 RD/RA costs for the Site. Based on currently available information, EPA estimates that the OU1 RD/RA costs will be $11,364,800.

V. DETERMINATIONS BY EPA

18. Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

a. the Site is a "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

b. Respondent is a "person," as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

c. Respondent is a "potentially responsible party" within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g)(1);

d. there has been an actual or threatened "release" of a hazardous substance from the Site, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

e. prompt settlement with Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

f. Respondent's payment to be made under this Consent Order represents only a minor portion of the response costs at the Site, pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

g. the amount of hazardous substances contributed to the Site by Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by Respondent are minimal in comparison to other hazardous substances at the Site, pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. ORDER

19. Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, and intending to be legally bound, EPA and Respondent agree, and EPA hereby orders, as follows:

VII. PAYMENT BY RESPONDENT

20. a. Within thirty (30) days of the effective date of this Consent Order, Respondent shall remit to EPA the amount set forth in Paragraph 20.b., by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Respondent's check shall reference the Site name, the name and address of Respondent, and the EPA Index Number of this Consent Order (II-CERCLA-95-0217), and shall be sent to the following address:

EPA Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

b. The amount to be paid by Respondent pursuant to this Consent Order is $75,094.65.

c. The amount to be paid by Respondent under this Consent Order includes a premium to take into account possible cost overruns in completing the OU1 RD/RA and possible future costs if the first operable unit remedial action selected by EPA with respect to the Site proves not to be protective of public health or the environment.

21. Respondent shall simultaneously send copies of its check to:

Douglas Fischer
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

and

Sharon Trocher, Remedial Project Manager
New York/Caribbean Superfund Branch II
Emergency and Remedial Response Division
U. S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

VIII. CIVIL PENALTIES

22. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any term or condition of this Consent Order, it shall be subject to a civil penalty of up to $25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

IX. CERTIFICATION OF RESPONDENT

23. By signing this Consent Order, Respondent certifies to the best of its knowledge and belief, the following:

a. Respondent has provided to EPA all information in its possession, or in the possession of its officers, directors, employees, contractors, agents, or assigns, that relates in any way to the generation, treatment, transportation, storage, or disposal of any Waste Material(s) at or in connection with the Site;

b. Respondent has had the opportunity to review information made available by EPA;

c. the information contained in the documentation identified in Paragraph 23.a. is materially true and correct

with respect to: (i) the amount of Waste Material(s) that Respondent may have transported to, or arranged for the transport for disposal at, the Site; (ii) the chemical nature and constituents of such Waste Material(s); and (iii) the toxic or other hazardous effects of such Waste Material(s); and

d. with respect to the totality of the information provided to EPA by Respondent as described in Paragraph 23.a., in combination with any information provided to Respondent by EPA describing Respondent's alleged involvement related to the Site, Respondent neither possesses nor knows of any other documents or information that would suggest:

i. that the Respondent has shipped a higher volume of Waste Material(s) to the Site than is indicated by this information; or

ii. that Respondent has shipped Waste Material(s) to the Site possessing different chemical natures or constituents or possessing more toxic or other hazardous effects than are indicated by this information.

X. COVENANT NOT TO SUE BY THE UNITED STATES

24. In consideration of the payment that will be made by Respondent pursuant to Section VII of this Consent Order, and except as specifically provided in Paragraphs 25 through 28 of

this Consent Order, the United States covenants not to sue or to take any other civil or administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the OU1 RD/RA at the Site or Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the payment required by Section VII, above. This covenant not to sue is conditioned upon the complete satisfaction by Respondent of its payment obligations under this Consent Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

Reservation of Rights

25. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 24. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters, including the following:

a. claims based on a failure to make the payment required by Section VII of this Consent Order;

b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances unrelated to this Site;

c. liability arising out of future disposal by Respondent of any hazardous substance at the Site;

d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;

e. liability for response costs that have been or may be incurred by the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, or any other federal trustees for natural resources relating to the Site;

f. criminal liability;

g. liability for additional operable units at the Site; and

h. liability for violations of law other than those that are addressed under this Consent Order.

26. Nothing in this Consent Order constitutes a covenant not to sue or a covenant not to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from Respondent, and the covenant not to sue in this Consent Order is null and void, if information unknown to EPA as of the date of the execution of this Consent Order by EPA is discovered that indicates that Respondent no longer qualifies as a de minimis party at the Site because Respondent contributed greater than 1.0% of the hazardous substances at the Site or contributed hazardous substances which are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or

claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 24, above.

28. Nothing in this Consent Order is intended as a release or covenant not to sue for any entity not a signatory to this Consent Order, and the United States expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation, or other entity not a signatory to this Consent Order. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order.

XI. COVENANTS BY RESPONDENT

29. In consideration of the United States' covenant not to sue in Section X, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, its agencies, officers, representatives, contractors, or employees, with respect to the Past Response Costs or the OU1 RD/RA at the Site or this Consent Order including (a) any direct or indirect claim for reimbursement from the Hazardous Substance

Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), through Sections 106(b)(2), 111, or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other provision of law; and (b) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, related to the Past Response Costs or the OU1 RD/RA.

XII. CONTRIBUTION PROTECTION

30. With regard to claims for contribution against Respondent, the Parties hereto agree that Respondent is entitled to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for matters addressed in this Consent Order. The matters addressed in this Consent Order, for purposes of the preceding sentence, are any and all civil liability pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of Past Response Costs or the costs of the OU1 RD/RA, and any and all civil liability for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, in connection with the OU1 RD/RA. Such contribution protection with respect to Respondent is conditional upon Respondent's compliance with the requirements of this Consent Order.

XIII. CLAIMS AGAINST THE FUND

31. Nothing in this Consent Order shall be deemed to constitute preauthorization of a CERCLA claim within the meaning

of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612, or 40 C.F.R. § 300.700(d).

XIV. OPPORTUNITY FOR PUBLIC COMMENT

32. This de minimis Consent Order shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). The United States may withdraw its consent to this Consent Order if comments received disclose facts or considerations that indicate that this Consent Order is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL

33. This Consent Order shall be deemed to be issued upon the approval of the settlement embodied in this Consent Order by the Attorney General or her designee, pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVI. EFFECTIVE DATE

34. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Paragraph 32, above, has closed and that comments received, if any, do not require EPA to modify or withdraw from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: _____ 9/27/95
Jeanne Fox
Regional Administrator
U.S. Environmental Protection Agency
Region II

Date

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CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. The Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of the Respondent certifies under penalty of perjury under the laws of the United States and of the State of the Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind the Respondent thereto.

Reynolds Metals Company
NAME OF RESPONDENT

9-26-95
Date

(signature)

Roger H. Donaldson
(typed name of signatory)

Director of Technology
(title of signatory)

CONTRACT APPROVALS PER COM C-13.6

REQUIRED APPROVAL	SIGNATURE	DATE
LEGAL		9/26/95

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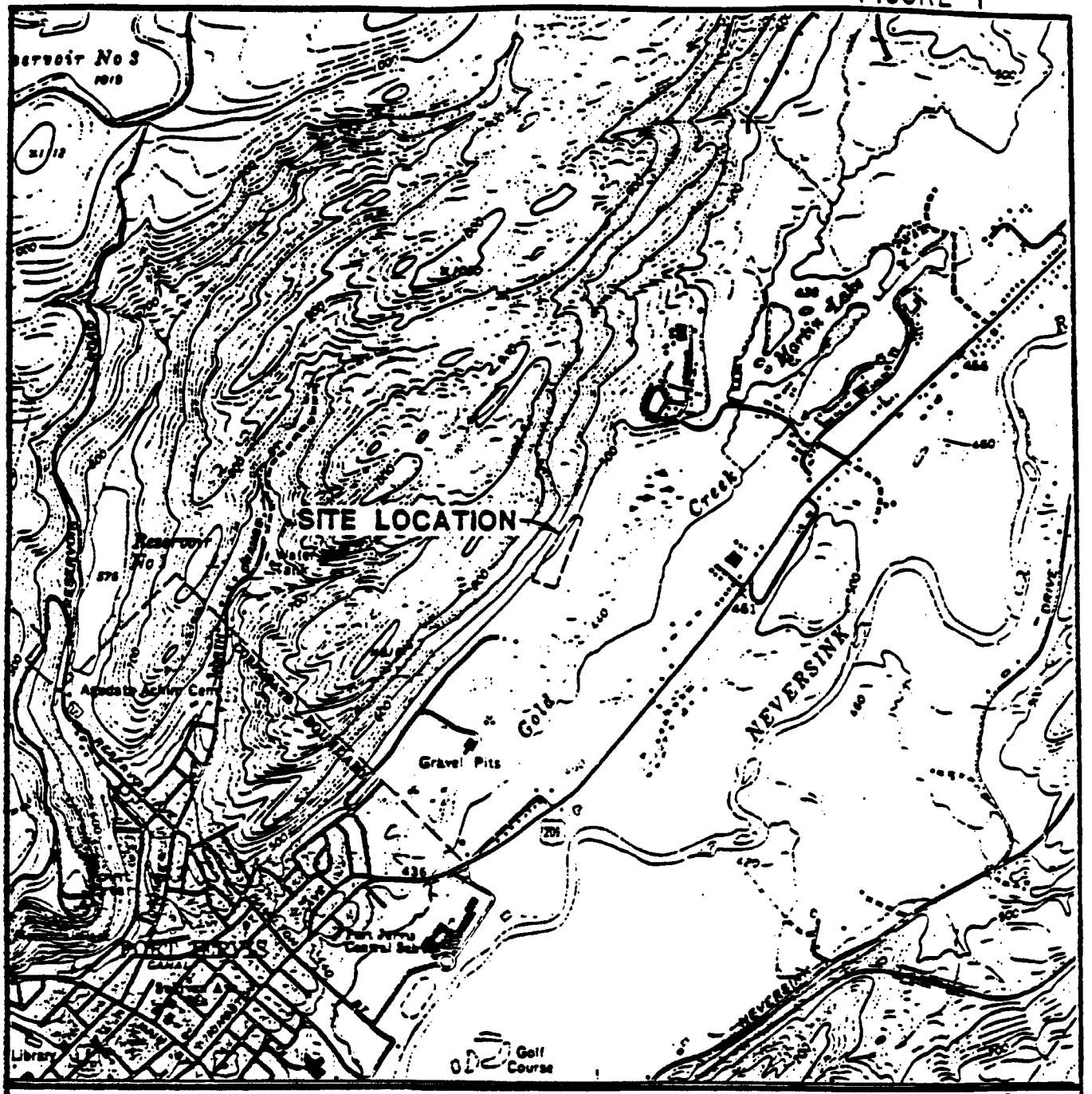
APPENDIX 1

FIGURE 1



CARROLL AND DUBIES SITE
PORT JERVIS, NEW YORK

SITE LOCATION MAP

SCALE
2000' 0 2000'

700058

SOURCE: USGS 7 1/2 MIN. TOPOGRAPHIC QUAD.
PORT JERVIS NORTH, NY-PA 1969.

BLASLAND & BOUCK ENGINEERS, P.C.
ENGINEERS & GEOSCIENTISTS

Carroll & Dubies Superfund Site
***De Minimis* Settlement Responsiveness Summary**

Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9622(i), requires EPA to publish in the Federal Register notice of ***de minimis*** settlements entered into pursuant to Section 122(g) of CERCLA, 42 U.S.C. §9622(g), and, for a 30-day period beginning on the date of publication, to provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) further requires EPA to consider any comments filed during the 30-day period and permits EPA to withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

In accordance with Section 122(i) of CERCLA, on February 13, 1996, EPA published notice in the Federal Register, 61 FR 5550, of a proposed *de minimis* settlement, EPA Docket No. II-CERCLA-95-0217, concerning the Carroll & Dubies Superfund Site, Town of Deer Park, New York. Attached is the comment letter received and EPA's response to those comments. The comments received on this proposed settlement did not disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Therefore, pursuant to paragraph 34 of the proposed Administrative Order on Consent, the proposed settlement will be final and effective on the date EPA issues written notice to Respondent that the comments received did not require EPA to modify or withdraw from the Order.

Kathleen C Callahan
Jeanne Fox
Regional Administrator

7/12/96
Date

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 16 1996

Robert J. Glasser
Gould & Wilkie
One Chase Manhattan Plaza
58th Floor
New York, NY 10005-1401

Jonathan Murphy
Lester Schwab Katz & Dwyer
120 Broadway
New York, NY 10271-0071

Re: Carroll & Dubies Superfund Site
Response to Comments on Administrative Order on Consent II-CERCLA-95-0217

Dear Mr. Glasser and Mr. Murphy:

This letter is written in response to your March 19, 1996 comments on the proposed *de minimis* settlement between the Environmental Protection Agency ("EPA") and the Reynolds Metals Company ("Reynolds"). EPA has reviewed your comments and finds that your comments do not "disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate." 42 U.S.C. § 9622(i)(3).

Section 122(g)(1)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9622(g)(1)(A), and EPA's various guidance documents relating to *de minimis* settlements, set forth the criteria by which EPA should evaluate a *de minimis* settlement. EPA determines the relative volume of the PRP's waste contributed to the site, and also determines if that waste is significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the site.[1] In this case EPA found that Reynolds contributed approximately .32% of the waste sent to the Carroll and Dubies Superfund Site (the "Site"). This waste was not more toxic nor of greater hazardous effect than the other hazardous substances at the Site. As such, Reynolds was eligible for a *de minimis* settlement.

You initially argue that the information provided by Reynolds is "conclusory, self-serving and incomplete." You assert that little or no corroborative data has been supplied. As you know,

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[1] See, CERCLA §122(g)(1)(A)(ii); Streamlined Approach for Settlements with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A), OSWER Directive 9834.7-1D (July 30, 1993); Interim Guidance on Settlements with *De Minimis* Waste Contributors Under Section 122(g) of SARA, OSWER Directive 9834.7 (June 19, 1987); Methodologies for Implementation of CERCLA Section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements, OSWER Directive 9834.7-1B (December 20, 1989).

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trying to reconstruct the precise quantity and type of substances disposed of at a site, by all of the parties, is a difficult task, particularly when the operator of the site kept poor records. Therefore, in such instances, EPA relies on generators to provide information, to the best of their abilities, and to sign certifications, certifying that the information is accurate. Much of the information known about the wastes disposed of at the Site comes from information submitted by the generators of the hazardous substances disposed of at the Site. EPA has no reason to believe that the information presented by Reynolds is anything but truthful, complete and accurate. It should be noted that the Administrative Order on Consent, Index # II-CERCLA-95-0217 (the "*de minimis* settlement" or the "Consent Order") at Section IX, contains a certification that Reynolds has provided all information in its possession, or the possession of its contractors, employees, agents, etc., and that the information is materially true and correct with regard to the volume and toxicity of the waste material Reynolds sent to the Site. Additionally, paragraph 26 of the Consent Order specifically makes null and void the Government's covenant not to sue if additional information is uncovered which indicates that Reynolds contributed greater than 1.0% of the hazardous substances at the Site or contributed hazardous substances which were significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

Your comments further raise a question about the type and toxicity of the waste Reynolds sent to the Site. You argue that Reynolds' waste stream might have contained MEK and that, in any event, you believe the total VOC content of the waste inside spray to be greater than that which Reynolds has claimed. First of all, MEK has not been found at the Site and thus is not of concern. Second, even if MEK were found at the Site, or if the total VOC content of the wastes sent to the Site by Reynolds was higher than what Roger Donaldson surmised in his affidavit, the waste would not be "significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the facility". See Streamlined Approach for Settlements With *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A), OSWER Directive 9834.7-1D, (July 30, 1993) at page 2. While VOCs are contaminants of concern at the Site, arguably the leading VOC of concern at the Site, based on the analytical data that has been gathered, is benzene. EPA has no reason to believe that Reynolds is the source of the benzene. Under these circumstances, there would be no basis for EPA to conclude that Reynolds' waste was significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

Similarly, your suggestion, based on recent court opinions in other cases, that Reynolds' waste might have contained chromium and other heavy metals, and thus may have been more toxic than we think, is without merit. EPA has no reason to believe that Reynolds' waste was anything but the waste inside spray that the company claims and that waste does not include chromium. Moreover, even if Reynolds' waste contained chromium, we fail to see how Reynolds' waste would have been more toxic or of significantly greater hazardous effect than the chromium waste Kolmar admitted sending to the Site.

You further claim that the allocation assigned to Reynolds', .32%, is inappropriate, because it doesn't take into consideration the fact that Reynolds' never participated in the response actions taken at the Site thus far. Again EPA disagrees. The idea behind *de minimis* settlements is to

allow the minor contributors of waste to a site to resolve their liability early in the response process. Under the circumstances of this case, EPA does not believe that it would have been appropriate to make an adjustment of Reynolds' allocated share based on its level of participation in the past response actions.

Your final argument alleges that Reynolds has been relieved from responsibility for future response costs at the Site. You may have misunderstood the covenant not to sue and the reservation of rights provisions of the Consent Order. Under the Consent Order, the United States' covenant not to sue only covers EPA's past costs through May 17, 1995, and the OU1 RD/RA at the Site. In paragraph 25.g., The United States specifically reserved its rights regarding Reynolds' liability for additional operable units at the Site.

You are also concerned that EPA did not include in its settlement calculation the $1.3 million in site investigation costs for OU1 paid by your clients. Please note that Section XII of the Consent Order provides for contribution protection for Reynolds, as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. §9622(g)(5), for matters addressed in the Consent Order. For the purposes of that provision of the Consent Order, the "matters addressed" are "any and all civil liability pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for reimbursement of Past Response Costs or the costs of the OU1 RD/RA, and any and all civil liability for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. §9606, in connection with the OU1 RD/RA." "Past Response Costs" is defined at paragraph 6.g. as "all costs, including, but not limited to, direct and indirect costs that EPA paid at or in connection with the Site through May 17, 1995, plus the interest on those costs which has accrued pursuant to 42 U.S.C. §9607(a) through the effective date of this Consent Decree." Thus, the contribution protection provided to Reynolds pursuant to the Consent Order does not cover your clients' costs of performing the OU1 Remedial Investigation and Feasibility Study.

Finally, the $75,094.65 to be paid by Reynolds under the Consent Order will be credited against the response costs for which EPA would otherwise be billing your clients.

For all of the above reasons, EPA finds that your comments do not warrant a reconsideration of the proposed Consent Order.

Sincerely yours,

Sharon E. Kivowitz
Assistant Regional Counsel
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cc: D. Garbarini, ERRD
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March 19, 1996

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Re: Carroll & Dubies Superfund Site;
U.S. EPA Index No. II-CERCLA-95-0221

Dear Ms. Kivowitz:

This letter is submitted on behalf of Kolmar Laboratories, Inc. and Wickhen Products Inc. in response to the Federal Register Notice of February 13, 1996 (61 Fed. Reg. 5551) concerning a proposed de minimis administrative settlement with Reynolds Metals Company. We appreciate your assistance in providing certain documents and in extending the time for receipt of this submission to, and including, Tuesday, March 19, 1996. Kolmar and Wickhen have reviewed the materials submitted by Reynolds and the proposed Administrative Consent Order, which you were kind enough to provide. We believe that the proposed settlement is unfair and should not be adopted.

A. Reynolds' Own Information Indicates That Highly Concentrated Hazardous Substances Were Disposed

The information provided by Reynolds to EPA is conclusory, self-serving and incomplete. Little or no corroborative data have been supplied, and the information presented by Reynolds contains a number of inconsistencies and areas of incompleteness. For example, Reynolds extensively used methylethylketone ("MEK")

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at its facility as part of its "inside spray" waste stream in 1976 and 1977, but has not included MEK as a waste component for 1978. Although Reynolds' July 28, 1995 letter asserts that "to the best of" its knowledge, it used a Glidden inside spray in 1978, no support for this assertion has been provided. In addition, Reynolds acknowledges that the Glidden product contains 37% by weight (non-water) ingredients (July 28 letter, at page 2). Reynolds attempts to minimize the significance of this high concentration of hazardous material through the Donaldson affidavit, sworn to May 3, 1995. The Donaldson affidavit is of dubious reliability. While the Donaldson affidavit asserts that the current inside spray used by Reynolds "never has a flash point of less than 140°" (¶ 8), the SCM MSDS, page 2, Section IV, states that the flash point is 124°F. This raises questions about the reliability of the information presented by Reynolds. Furthermore, the MSDS classifies the material as a combustible liquid, which contradicts Reynolds' efforts at explaining away its admission of the waste as "ignitible" in the DEC Right-to-Know Forms. Although Reynolds points to the post-1986 composition of the Glidden/SCM inside spray in an effort to suggest that the material is not hazardous, other information it submitted establishes that pre-1980 inside spray contained greater levels of VOCs/SVOCs. (See Reynolds' reference in ¶ 8 to the increase in flash point since "the mid-1980's" resulting from "reduced... VOC content of inside spray.") Furthermore, the suggestions in the Donaldson affidavit (¶ 6) to the effect that the "overspray" was in solid form (scraped from machines) is contradicted by the Reynolds admission that the ignitable inside spray waste (74.7 tons) was a liquid waste. Thus, the opinion by Mr. Donaldson at ¶ 9 of the affidavit that the "VOC content" of the inside spray waste product in 1978 was about 5% is, at best, strained.

Moreover, even if the total VOC content was reduced from 16% in the "virgin product" (Reynolds' July 28 letter at 2) to 5% (as the Donaldson affidavit opines), the resulting concentrations of VOCs are substantial. If one makes the simplifying assumption that the relative proportion of the three VOCs admitted by Reynolds to be hazardous remains constant, the resulting concentrations would be:

	Virgin Product	Factor	Waste Stream	
ethylene glycol	8%	5/16	2.5%	25,000 ppm
butyl alcohol	7.5%	5/16	2.3%	23,400 ppm
xylene	0.5%	5/16	0.16%	1,560 ppm
Total	16.0%		4.96%	49,960 ppm

While the Donaldson affidavit contends that VOCs would have volatilized both at the point of application and at the point of loading into 55 gallon drums, it is not established that those activities took place entirely open to the atmosphere (particularly recognizing that the 1970s flash point for inside spray was likely lower than in the post-1980 time period, as represented in the Reynolds (May 23, 1986) "Technical Data Sheet.") Note that the Reynolds Technical Data Sheet states that the application method is "airless spray," implying limited volatilization.

In addition to the admitted 5% VOC content, Reynolds' waste stream contained resins. These constituents may be a contributing factor to the characteristics of the Lagoon 7 sludge. As a result of both the high VOC content of 50,000 ppm admitted by Reynolds, and the high admitted resins content of the Reynolds wastes, it is not appropriate to deem the Reynolds waste as not contributing disproportionately to the site (Consent Order ¶ 15).

Based upon a number of court decisions, it appears that there is also a potential for certain aluminum manufacturing operations to produce chromium and other heavy metal wastes. See, Bell Petroleum Services, supra; U.S. v. Alcan Aluminum Corp., 964 F.2d 252 (3rd Cir. 1992); U.S. v. Alcan Aluminum Corp., 990 F.2d 711 (2nd Cir. 1993); and City of New York v. Exxon Corp., 766 F.Supp. 177 (S.D.N.Y. 1991). Accordingly, Kolmar and Wickhen are concerned that the aluminum manufacturing operations of Reynolds may have produced these wastes, and may have led to disposal of these wastes at the Carroll & Dubies site. While we do not suggest that the Reynolds operations were identical to those of the aluminum company discussed in the above cases, the potential for similar contamination should be investigated by EPA prior to any resolution of the proposed settlement.

B. Reynolds' Allocation Should Be Increased Because of Reynolds' Inaction

The proposed settlement indicates that the allocation for Reynolds is proposed to be 0.32%. This factor represents 17,935 gallons for Reynolds compared to 5,538,000 gallons for Kolmar and Wickhen. This volumetric basis for allocation is inappropriate. Reynolds has done nothing to facilitate remediation of the site. Reynolds' efforts have been limited to seeking to exculpate itself or minimize its exposure. EPA has the discretion to apply (and should apply here to increase Reynolds' share) the relative "degree of cooperation with Federal, State, or local officials to prevent any harm to the public health or the environment." This is one of the so-called "Gore factors" and represents a concept of fairness among PRPs that should be applied here. See, Bell Petroleum Services, Inc. v. EPA, 3 F.3d 889 at 899 (5th Cir. 1993). Based upon Reynolds' lack of participation in developing a solution for the site, and upon the admitted high concentrations of materials, including VOCs, sent to the site by Reynolds, a significantly increased allocation to Reynolds is required.

Equally troubling, EPA has focused solely on volume without regard to the toxicity of Reynolds' waste.

C. The Proposed Settlement is Inadequate

The proposed payment by Reynolds is inadequate, because EPA has failed to include total response costs in calculating the settlement. The proposed settlement is based on EPA costs for OU1 through May 17, 1995 only, almost one year ago, and would relieve Reynolds from responsibility for later EPA response costs. Reynolds should bear its equitable share of all EPA OU1 (and OU2) response costs, and the arbitrary May, 1995 cut-off should not be used. In addition, Reynolds should pay its equitable share of response costs that EPA avoided: the $1.3 million in site investigation costs for OU1 that EPA avoided by the actions of Kolmar and Wickhen. If Kolmar and Wickhen had not funded those studies, EPA would have incurred those or greater additional response costs. The proposed settlement rewards Reynolds for refusing to participate in funding of the site investigation costs and is thereby unfair to Kolmar and Wickhen.

All payments received from Reynolds, no matter how categorized by EPA, should be credited against the response costs that otherwise would be charged by EPA against Kolmar and Wickhen.

For the reasons set forth above and in our letter of May 30, 1995 (which is incorporated herein by this reference), Kolmar and Wickhen urge EPA to reject the proposed settlement, to investigate the matters described above, and to allocate significantly increased responsibility to Reynolds in consideration of Reynolds' wastes, and Reynolds' lack of cooperation. All monies received from Reynolds should reduce the EPA costs otherwise chargeable to Kolmar and Wickhen.

Respectfully submitted,

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